**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNIVERSAL IMAGINE PRINT GROUP, LLC,	)	
d/b/a IMAGINE PRINT GROUP,	)	
	)	
Plaintiff	)	Case No. 07 C 6720
	)	
v.	)	Judge Charles P. Kocoras
	)	Magistrate Judge Cox
JAMES MULLEN,	)	
	)	
Defendant.	)	

**DEFENDANT'S MOTION TO DISMISS THE PLAINTIFF'S COMPLAINT FOR
INJUNCTIVE AND OTHER RELIEF**

The Defendant, JAMES MULLEN ("Mullen"), by and through his attorneys,

Michael M. Lorge and David A. Shapiro of Bronson & Kahn LLC, and pursuant to

Fed.R.Civ.P. 12(b)(6) and 12(b)(1), moves the Court to dismiss the Complaint For

Injunctive And Other Relief ("Complaint") of the Plaintiff, UNIVERSAL IMAGINE PRINT

GROUP, LLC, d/b/a IMAGINE PRINT GROUP ("Imagine").

In support of his Motion, Mullen states as follows:

INTRODUCTION AND BACKGROUND

1.   On November 30, 2007, Mullen was served with the Complaint filed

herein, along with a Motion For Temporary Restraining Order.

2.   The gist of the Complaint is that Mullen, a former sales manager for

Imagine, a local printing company, breached a Non-Disclosure Agreement

("Agreement") [1] and violated the Computer Fraud And Abuse Act ("CFAA"),

18 U.S.C. §1030, et seq., by (a) deleting data from his desk top computer

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[1] Mullen did not sign a non-compete agreement, nor was he ever asked to do so.

just prior to leaving Imagine's employ and (b) taking certain printing job files with him to his new employer.

3. The foregoing conduct was allegedly discovered on or about November 9, 2007, the date Mullen resigned from his employment with Imagine. Yet, nowhere is it alleged how Mullen allegedly deleted data from his computer, *e.g.* by merely pressing the "delete key" on his computer or by introducing a software program into his computer with the specific intent to wipe clean all data contained in the hard drive.

4. Likewise, the Complaint is bereft of any allegations with respect to the type of data deleted, *e.g.*, personal emails vs. pending job tickets, or the damage allegedly sustained as a result of the deletion, *i.e.*, whether the deleted data is still retrievable by Imagine.

5. The Complaint and more specifically, the proposed TRO Order, request both prohibitive and mandatory injunctive relief, to wit:

   a. That Mullen and all persons acting in concert with him be temporarily enjoined from using or disclosing to any third party the "Confidential Information" or "Employer Property" of Imagine.

   b. That Mullen be enjoined to immediately return to Imagine all "Confidential Information" and "Employer Property" he allegedly took with him from Imagine's premises at or prior to the time of his resignation.

6. The Count I CFAA claim must be dismissed for failure to state claim upon which relief can be granted and accordingly, the entire Complaint must be dismissed due to lack of subject matter jurisdiction, as said Count is the sole basis for federal subject matter jurisdiction (see Complaint, ¶3).

7.   In addition, the Count V claim for violation of the Illinois Trade Secrets Act ("ITSA"), 765 ILCS 1065/1, et seq., must be dismissed for failure to state a claim, as there is no allegation that Mullen used any confidential information of Imagine.

8.   Furthermore, as a matter of well established law, the ITSA claim preempts Imagine's supplemental claims for violation of the Illinois Computer Tampering Act, 720 ILCS 15/16 D-3, et seq. (Count II) and breach of fiduciary duty, since both counts rely on the alleged improper use of the same confidential information as alleged in the ITSA claim. See ITSA, Section 8, 765 ILCS 1065/8.

WHEREFORE, the Defendant, JAMES MULLEN, prays as follows:

A.   That Count I of the Complaint be dismissed, with prejudice;

B.   That Counts II-V of he Complaint be dismissed, without prejudice;

C.   That the Motion For Temporary Restraining Order be denied; and

D.   For such other and further relief as the Court deems just and appropriate.

Respectfully submitted:
Defendant, JAMES MULLEN

By: _____
     One of His Attorneys

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